

etc., R. R. Co. v. State, use Bitzer, 58 Md. 398; State, use Allen v. Pittsburg, etc., R. R. Co., 45 Md. 47; Melitch v. United Rwy. & Elec. Co., 121 Md. 458.

While burden in beginning is on plaintiff to show a *prima facie* wrongful killing, if defendant alleges justification or excuse, burden is on him to prove it. Tucker v. State, use Johnson, 89 Md. 489. (See dissenting opinion also for discussion of burden of proof.)

This section has no application where injury occurs outside of Maryland, although deceased is a citizen of this state. State, use Allen, v. Pittsburg, etc., R. R. Co., 45 Md. 45; Dronenburg v. Harris, 108 Md. 608.

Where a sheriff is charged with permitting a lynching, his bond cannot be sued under this section. The cause of action depends entirely upon this article and it must be prosecuted in the manner herein prescribed only. It cannot be converted into an *ex contractu* action, as it has no reference to a contract, or a bond, or any responsibility arising therefrom. Cocking v. Wade, 87 Md. 545 (concurring opinion).

In order to maintain a suit under this article, equitable plaintiffs must show a pecuniary interest in life of deceased; jury may not consider the pain and suffering of deceased nor mental suffering of equitable plaintiffs. This article contrasted with Lord Campbell's Act. Elder v. B. & O. R. R. Co., 126 Md. 498.

A suit under this and the following sections should have been withdrawn from jury as to one defendant under the doctrine of assumption of risk, and was properly withdrawn as to other defendant because there was no evidence of negligence. Westinghouse E. & Mfg. Co. v. Monroe, 129 Md. 61.

The compromise and settlement of a separate suit against a wrongdoer who is severally liable with defendant for a tort, held to bar a suit under this section since there can be but one compensation for same injury. Cox v. Md. Elec. Rwy. Co., 126 Md. 301.

In a suit under this article the evidence of a father as to number and ages of his children when offered for purpose of showing that deceased took care of younger children, thus saving expense of an attendant, and leaving the mother free to aid her husband in his business, is admissible. U. Rwy. & E. Co. of Balto. v. Mantik, 127 Md. 205.

Where an injured person dies after having for a valuable consideration executed to party who injured him a release of all claim which he might or could possibly have for or on account of his injuries, no action lies under this and following sections. Melitch v. United Rwy. & Elec. Co., 121 Md. 457.

Suit may not be brought under this article or under art. 75, sec. 29, or art. 93, sec. 109, by husband of a woman who was killed by a man, since deceased, against personal representative of latter. "*Actio personalis moritur cum persona.*" Meaning of "injuries to the person." Demczuk v. Jenifer, 138 Md. 491. And see White v. Safe Dep. & Tr. Co., 140 Md. 599.

Action by husband for death of his wife abates on death of the husband or of defendant. There is no contractual relation between state and defendant. Harvey v. B. & O. R. R. Co., 70 Md. 324.

For a variance between the proof, and declaration and particular, see B. & O. R. R. Co. v. State, use Woodward, 41 Md. 297.

Both deceased and equitable plaintiff must have been free from contributory negligence. State, use Coughlan, v. B. & O. R. R. Co., 24 Md. 107; B. & O. R. R. Co. v. State, use Fryer, 30 Md. 52.

For cases under this section involving contributory negligence, see State, use Price, v. Cumberland, etc., R. R. Co., 87 Md. 186; B. & O. R. R. Co. v. State, use Chambers, 81 Md. 371; State, use Hartlove, v. Fox, 79 Md. 521; B. & O. R. R. Co. v. State, use Strunz, 79 Md. 335 (involving the imputing of negligence to the plaintiff); Baltimore, etc., Turnpike Co. v. State, use Grimes, 71 Md. 580; B. & O. R. R. Co. v. State, use Mahone, 63 Md. 148; Pennsylvania R. R. Co. v. State, use McGirr, 61 Md. 108; B. & O. R. R. Co. v. State, use Hauer, 60 Md. 449; Philadelphia, etc., R. R. Co. v. State, use Bitzer, 58 Md. 397; State, use Bacon, v. Baltimore, etc., R. R. Co., 58 Md. 482; State, use Hamelin, v. Malster, 57 Md. 287; Baltimore, etc., R. R. Co. v. State, use Stansbury, 54 Md. 648; Northern Central R. R. Co. v. State, use Burns, 54 Md. 113; Cumberland, etc., R. R. Co. v. State, use Moran, 44 Md. 283; B. & O. R. R. Co. v. State, use Woodward, 41 Md. 299; Cumberland, etc., R. R. Co. v. State, use Fazenbaker, 37 Md. 156; B. & O. R. R. Co. v. State, use Dougherty, 36 Md. 366; B. & O. R. R. Co. v. State, use Trainor, 33 Md. 542; Northern Central R. R. Co. v. State, use Geis, 31 Md. 357; B. & O. R. R. Co. v. State, use Fryer, 30 Md. 47; B. & O. R. R. Co. v. State, use Smith, 29 Md. 460; Northern Central R. R. Co. v. State, use Price, 29 Md. 420; B. & O. R. R. Co. v. State, use Miller, 29 Md. 252; State, use Coughlan, v. B. & O. R. R. Co., 24 Md. 84.

For cases to which this section was held to have no application because of a failure to prove that defendant had been negligent, see Northern Central Ry. Co. v. Medairy, 86 Md. 168; State, use Brady, v. Consolidated Gas Co., 85 Md. 637; B. & O. R. R. Co. v. State, use Good, 75 Md. 526; B. & O. R. R. Co. v. State, use Savington, 71 Md. 590; State, use Janney, v. Housekeeper, 70 Md. 162; B. & O. R. R. Co. v. State, use Allison, 62 Md. 479; State, use Barnard, v. Philadelphia, etc., R. R. Co., 60 Md. 555; State, use Miller, v. B. & O. R. R. Co., 58 Md. 221; State, use Hamelin, v. Malster, 57